



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

Gerald M. Kamm
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May 17, 1939

**Honorable Mortimer Brown
Executive Secretary
Teacher Retirement System of Texas
Austin, Texas**

Dear Sir:

**Opinion No. O-468
Re: Membership in Teacher
Retirement System**

We are in receipt of your letter of April 15, 1939, in which you request the opinion of this department on the following question:

"If a member of the Teacher Retirement System applies for withdrawal and the return of his accumulated contributions because of having ceased to be a teacher, would he automatically become a member of the Teacher Retirement System if he should in the future teach again in the public schools of Texas?"

Section 3 (1) of the Teacher Retirement Act provides that all persons who were teachers as of the date the Retirement System was established, should become members as of that date as a condition to their employment unless within a period of ninety (90) days after September 1, 1937, the teacher filed notice of his election not to be covered by the system and filed a properly executed waiver. Section 3, subsection (2) provides:

"Beginning September 1, 1938 and thereafter any teacher teaching for the first time in Texas shall become a member of the Retirement System as a condition of his employment."

Subdivision 3 provides that if a teacher should withdraw his accumulated contribution, he shall thereupon cease to be a member.

Subdivision 4 provides that a teacher who, within ninety (90) days after September 1, 1937, elected not to become a member, may make application to become a member at the beginning of any new school year, but without claim for prior service credit.

Section 4, subdivision 4, provides, in part:

"When membership ceases, such prior service certificate shall become void. Should the employee again become a member, such a person shall enter the system as a member not entitled to prior service credit except as provided in Section 5, subsection 5, § (b) of this Act."

Section 4, subsection 5, § (b) provides for restoration

of membership and recognition of the prior service certificate where a teacher has been on disability benefits, and has been restored to the service.

The provisions of the act as a whole show a legislative policy that all teachers who teach in the public schools in Texas shall become members as a condition to their employment except persons who were teachers when the system was established and who expressly elected not to come under the act. Provision is made for such teachers to later become members.

Although Section 4, subdivision 4, does not specifically state that former teachers who again re-enter the profession shall automatically become members of the system, it does contemplate that they may become members. No provision is made for any election on their part and we think, that in keeping with the general policy of the act, such provision would have been made had it been intended that they should make application or be given an option. Your question is therefore answered in the affirmative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Cecil C. Carmack
Cecil C. Carmack
Assistant

COC:H:jrb

APPROVED
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
BY G.R.R., Chairman